



GRETCHEN WHITMER
GOVERNOR

STATE OF MICHIGAN
DEPARTMENT OF LICENSING AND REGULATORY AFFAIRS
LANSING

ORLENE HAWKS
DIRECTOR

Boardwalk Commercial Exchange Company
and Todd Stacy Enterprises LLC,
Petitioners,

MICHIGAN TAX TRIBUNAL

v

MOAHR Docket No. 20-003953

Elk Rapids Township,
Respondent.

Presiding Judge
Marcus L. Abood

FINAL OPINION AND JUDGMENT

INTRODUCTION

Petitioners, Boardwalk Commercial Exchange Company, LLC and Todd Stacy Enterprises, LLC, appeal ad valorem property tax assessment levied by Respondent, Elk Rapids Township, against Parcel Nos. 05-06-029-011-00, 05-06-029-015-00, and 05-06-450-006-00 for the 2020 and 2021 tax years. Thomas M. Amon, Attorney, represented Petitioners. Richard F. Cummins, Attorney, represented Respondent.

A hearing on this matter was held on April 26-29, 2022. Petitioners' witnesses were Jon Rooks and James Hartman. Respondent's witnesses were Karleen Sempert and Bradley Conkey.

Based on the evidence, testimony, and case file, the Tribunal finds that the true cash values (TCV), state equalized values (SEV), and taxable values (TV) of the subject property are as follows:

Parcel Number	Year	TCV	SEV	TV
05-06-029-011-00	2020	\$3,586,320	\$1,793,160	\$1,793,160
05-06-029-015-00	2020	\$421,920	\$210,960	\$210,960
05-06-450-006-00	2020	\$210,960	\$105,480	\$105,480
Parcel Number	Year	TCV	SEV	TV
05-06-029-011-00	2021	\$3,717,220	\$1,858,610	\$1,858,610
05-06-029-015-00	2021	\$437,320	\$218,660	\$218,660
05-06-450-006-00	2021	\$218,660	\$109,330	\$109,330

PETITIONERS' CONTENTIONS

Petitioners contend that the subject property is a unique home in a unique location. While the quality of construction and size of the dwelling are undisputed, the history and development of the property are noteworthy. The subject was built in 2000 by the former owner, Leslie Lee, who built the home with her grandchildren in mind. The home, formally known as Pine Hollow, was designed with grand amenities while sparing no expense. The subject is a high-end property intended primarily as a secondary home to potential buyers. The subject is located in Northern Michigan but is not considered a destination for people in the high-end tax bracket. That is to say, many other locales like Bay Harbor cater to wealthy individuals. Elk Rapids is a quaint sleepy community.¹ Traveling from Elk Rapids to other premier destinations (i.e., Charlevoix, Petoskey, Harbor Springs, Bay Harbor, Traverse City) for after-hours entertainment is difficult; taxi services are not readily available.

The former owner attempted to sell the property around 2012; the property was listed for 512 days at \$13.9 million dollars. The former owner then attempted to donate the property in 2014 but was met with fierce public opposition. The property was listed

¹ Tr, 136.

again in 2017 for \$12.9 million and then listed at \$9.9 million for 539 days. Marketing for the property included a U-Tube video as well as an MLive article. The listing price was reduced to \$6.9 million in 2019. Yet further, the home was listed for another 417 days at a reduced price of \$5.9 million.

Petitioners contend its purchase price of \$3.4 million for the real property and \$792,500 for personal property was arm's length. Overall, the property was on the market for almost 4 years.

The subject's floorplan and layout have many shortcomings including small bathrooms, bedrooms without doors, and lower ceilings. The lighting, stereo, and CD systems are outdated; these systems are not easily replaced due to the stone walls. There is an expectation in the rental of higher end homes to have remote control shades which the subject lacks. Likewise, many of the subject's irregular shaped windows do not even have blinds which create a privacy issue.

Jon Rooks and Todd Stacy visited the subject twice while discussing the purchase agreement and operation costs.² Petitioners contend the purchase price was initially too high. Petitioners discussed their partnership in the midst of the offer to purchase the subject property.³

Petitioners contend that the subject property is a unique "timeless treasure" but not at the asking price listed by the former owner.⁴ Petitioners negotiated the waiver of concerns (as referenced in the property inspection report) in return for personal property

² Tr, 42-48.

³ Rooks came late into the negotiation process and had concerns over a survey, inspections, and title insurance for the subject property.

⁴ Tr, 154-156.

items within the home.⁵ Petitioners consider the subject property as a “community jewel” and a “legacy property” but nonetheless wanted to negotiate the sale price along with the personal property. In hindsight, Petitioners would not have negotiated a deal for the subject property if they had a customary due diligence period of 2 months. This deal was pushed through in 2 weeks. Overall, the difficulties in repairs, updates and obtaining competitive quotes were all unforeseen in the midst of a closing transaction within 2 weeks.

Petitioners point to the property inspection report and items of concern including windows (defective seals), fascia/soffits, wood siding (moss, mold, discoloration), entry doors (mold, discoloration), stone siding (cracks, tuck pointing), concrete patio (cracking, heaving), over-grown landscaping and trees. Petitioners also point to a contractor's estimate regarding rotted wood deck.⁶ The in-door swimming pool is difficult to maintain due to temperature control and moisture. Moreover, the pool is deeper than the water table level; the pool would collapse if it were ever drained. Petitioners contend annual costs to operate the subject property would be \$440,000.⁷

Petitioners' intention was to utilize the subject property as a high-end rental property at \$7,000 per night.⁸

Petitioners' appraiser asserts the subject dwelling suffers from various items of functional obsolescence. For example, the contemporary style does not have an open floorplan which is generally more desired in the market. Many bedrooms are small (or open loft spaces) and walk through to other spaces; there are no common hallways for

⁵ Tr, 77-80.

⁶ Tr, 167.

⁷ Tr, 71.

⁸ Tr, 98, 102, 157.

bedroom access. Further, certain bedrooms do not have direct access to bathrooms; those bedrooms are potentially forced to use the first-floor pool bathroom. Some bathrooms and sinks are open in sleeping areas. In other words, access to a bedroom is through the bathroom. Many bedrooms do not have closets. The “Great Bear” room is a bunk house style area without air conditioning and without an attached bathroom. Bedrooms with smaller doorways and staircases with 19-inch wide access are also noted. One of the bathrooms has lowered floor fixtures designed for children. Overall, the subject’s first-floor area lacks an open floorplan (for entertainment purposes) which is more acceptable in the market. Likewise, easy access and flow from a kitchen, dining room and living room is more desirable than the subject layout.⁹ Petitioner contends that the subject’s materials are of excellent quality; however, the floorplan and use of stone and wood materials is negatively perceived by market participants.¹⁰

Petitioners’ appraiser considered all three approaches but only developed indications of value from the sales comparison approach. Petitioner developed the sales comparison approach by analyzing 9 sales (in excess of 7,000 square feet) in northwest Michigan. In general, the quantity of quality of sales data in the market justified the development of this approach to value. While considered, Petitioners’ appraiser did not develop an income approach due to the lack of rental data for high-end custom-built properties. Petitioners’ appraiser considered the cost approach but did not develop this approach because market participants would not consider this approach a useful measure of value. The age and location of the subject do not aid in a

⁹ Tr, 190-193.

¹⁰ Tr, 253-254.

cost analysis. The reconciliation of the approaches to value puts most weight on the sales comparison approach because of the availability of sales data including custom built high-end homes in the Northern Michigan area.

Regarding Respondent's conclusion of value, Petitioners refutes Respondent's sales data located in superior locations including Bay Harbor and Harbor Springs. Photographic evidence disproves Respondent's comparable sales which have superior amenities and are located in larger deep-water marinas. Moreover, Respondent's appraiser's own tastes and personal experiences (while extolling the grand virtues of subject property) are not relevant to this tax appeal matter. In other words, Respondent's appraiser acted as an advocate of the subject property and not as an impartial valuation expert.

Petitioners contend the township has over-assessed the subject property.

PETITIONERS' ADMITTED EXHIBITS

In support of its value contentions, Petitioners offered the following exhibits, which were admitted into evidence:

- P-1: Summary of Listing Information & Final Sale Price.
- P-2: Pine Hollow – MLS Listings.
- P-3: Subject Property Listing History Report.
- P-4: Buy/Sell Agreement and Addenda.
- P-5: Bill of Sale.
- P-6: Seller's Disclosure Statement.
- P-7: Inspection Report.
- P-8: Vesting Deed dated June 12, 2020.
- P-9: Survey dated June 5, 2020.
- P-10: Real Estate Transfer Tax Valuation Affidavit, PTA, and Closing Statements dated June 12, 2020.
- P-11: Site Photographs – Summer 2020.
- P-12: Site Photographs – Winter 2021.
- P-13: Appraisal Report prepared by James T. Hartman.
- P-14: Appraisal Correction Supplement by James T. Hartman.
- P-15: Appraisal Report prepared by Robert J. Reamer.

- P-16: Robert J. Reamer, Bayshore Drive, Workfile.
- P-17: Deeds between Leslie Lee and Pine Hollow Institute.
- P-18: Pine Hollow Institute Corporation Filings.
- P-19: Pine Hollow SLU Applications.
- P-20: Pine Hollow Closes Doors – The Ticker.
- P-21: Expense Cost Summary.
- P-22: Seller Provided Expenses Prior to Closing.
- P-23: Maintenance Invoices and Payment Records.
- P-24: Maintenance Quotes.
- P-25: Parkland Investment Transaction Report.
- P-26: Pine Hollow Valuation Cards for 2019 – 2021.
- P-27: Pine Hollow Property Record Details Webpage.
- P-28: Pine Hollow Walk Through Video 1 (on flash drive, separately filed).
- P-29: Pine Hollow Walk Through Video 2 (on flash drive, separately filed).
- P-30: Pine Hollow Walk Through Video 3 (on flash drive, separately filed).
- P-31: Pine Hollow Walk Through Video 4 (on flash drive, separately filed).
- P-32: Pine Hollow Walk Through Video 5 (on flash drive, separately filed).
- P-33: Pine Hollow Walk Through Video 6 (on flash drive, separately filed).
- P-34: 6025 Peninsula Drive – Photographs.
- P-35: Bay Harbor Brochure.
- P-36: Bay Harbor Brochure.
- P-37: Photographs - Respondent's Sale 2 (Boathouse).
- P-38: Respondent's Sale 7 – BS&A Record Card.

PETITIONERS' WITNESSES

Petitioners' first witness, Jon Rooks, is a real estate broker and commercial developer in West Michigan. He also handles high-end luxury properties in Michigan as well as in Aspen, Colorado and Miami, Florida.

Petitioners' second witness, James Hartman, prepared a narrative appraisal report for the subject property. He is primarily a commercial appraiser with almost 35 years of real estate and valuation experience. He is licensed in the state of Michigan and designated through the Appraisal Institute. Based on his background, education and experience, the Tribunal accepted Mr. Hartman as an expert real estate appraiser.

RESPONDENT'S CONTENTIONS

Respondent points out that Elk Rapids is a unique community with a variety of shops, bars, and restaurants.¹¹ Elk Rapids is not cut off from surrounding communities and has water access through the "chain of lakes."

Respondent contends Elk Rapids, while quaint, is a very busy tourist town in the summer months. Respondent also references, by example, the equalization ratio analysis for residential properties in the county which signifies strength and stability.¹²

Respondent's assessor points to the recent 2-year sales study and numerous property transfer affidavits (PTA) which were processed. Respondent's mass appraisal cost approach utilized an STC mandated land value analysis and ECF analysis.¹³

While the subject was exposed to the market for a length of time, the eventual sale transaction was not arm's length.¹⁴ Respondent contends Petitioners got a great deal on the subject property which is labeled as a magnificent work of art. The subject was built by renowned architect Glenn Hummel. The subject was further highlighted in the former owner's published book "Sacred Spaces."

Respondent's appraiser contends the subject dwelling's alleged wood exterior is not rot. Cedar cypress has a natural preservative for weathering. The black discoloration is easily power washed to reveal the wood's "crisp, clean look." Trim around the windows is teak wood which is a dense wood. The stone walls are 12

¹¹ Tr, 394. Bars include Short's Brewing, Ethanology, Cider Works, and Cellar 152. Restaurants include Siren Hall, Town Club, Riverwalk Grill, and Pearl's. There are two marinas – Elk Rapids Marina and Grace Harbor Marina.

¹² Tr, 398.

¹³ Tr, 402-415.

¹⁴ Tr, 565-567.

inches thick and show no structural cracks. The zinc roof has a life expectancy of 100 years. The subject is built with mortise and tenon construction with pegs.¹⁵

Respondent asserts that Petitioners have incorrectly portrayed the subject's construction materials.

Respondent considered all three approaches to value but only developed the sales comparison approach to value. Regarding an income analysis, Respondent's appraiser, after the completion of his appraisal report, would have probably developed an income analysis. This was based on Petitioners' intentions to market the subject as a high-end rental property. As noted, an income approach was not developed by Respondent. The cost approach was not developed due to the age of the subject improvements. Determining depreciation for the subject improvements is more difficult and not meaningful to an overall conclusion of value. In final reconciliation, Respondent places weight on sales comparison approach which analyzed properties in the northwest Michigan. The analyzed sales data focused on high-end custom-built homes similar to the subject in quality of construction. Further, the sales comparisons dealt with lake front properties similar to subject.

Regarding Petitioners' analysis, Respondent argues Mr. Rooks description of the subject as a "one-of-a-kind, timeless treasure. . ." contradicts Petitioner's appraiser's description of the subject's condition as average. The ample photographic evidence clearly shows the positive condition of the subject's interior. As a further contradiction, Petitioners' appraiser appears to have made both condition and age adjustments in his comparative analysis. Likewise, Petitioners' appraiser made both design and functional

¹⁵ Tr, 462-465.

obsolescence adjustments to his comparable sales. Petitioners' vast downward adjustments to its comparable sales are excessive and do not make sense. Petitioner's valuation disclosures are not credible for a determination of market value for the subject property.

RESPONDENT'S ADMITTED EXHIBITS

In support of its value contentions, Respondent offered the following exhibits, which were admitted into evidence:

- R-1: "Sacred Space" – Architecture/Poetry/Photography.
- R-2: Buy and Sell Agreement.
- R-3: Amendment to Purchase Agreement.
- R-4: Pine Hollow Interior and Exterior Inventory List.
- R-5: Assignment Consent and Notice/Master Lease.
- R-6: Email from Petitioner (June 5, 2020).
- R-7: Email from Petitioner (June 10, 2020).
- R-8: Email from Petitioner (June 4, 2020).
- R-9: Certificate of Survey.
- R-10: Geographic Information System Overlay.
- R-11: Curriculum Vitae – Bradley G. Conkey, Certified Appraiser.
- R-12: 2020 Subject Property Record Cards.
- R-13: 2021 Subject Property Record Cards.
- R-14: Valuation Report.
- R-15: 2020 GT Bay ECF Analysis.
- R-16: Deed.
- R-17: Pine Hollow – 10400 S. Bayshore Drive, Elk Rapids – Youtube Video.
- R-18: IRR Appraisal Report for 2020.
- R-19: IRR Appraisal Report for 2021.
- R-20: MLive Article.
- R-20a: Elk Rapids Aerial Photograph.
- R-21: Elk Rapids Aerial Photograph.
- R-22: Elk Rapids Aerial Photograph.

RESPONDENT'S WITNESSES

Respondent's first witness was Karleen Sempert who is a certified assessor in the state of Michigan. She is a Michigan Advanced Assessing Officer (formerly labeled

as a Level 3). She presently is the assessor for Elk Rapids Township and Kearney Township. Overall, Ms. Sempert has been in the assessing field since 1993. Through testimony, the witness's background, education, and experience was presented to the Tribunal. Based on this testimony, Ms. Sempert was acknowledged and admitted as an expert in mass appraisal assessing.

Respondent's second witness was Bradley Conkey, who is a Certified General Real Estate Appraiser in the State of Michigan. He has appraised properties in Michigan since 1991. He is also licensed in Indiana and Ohio. Based on his education, background and experience, the Tribunal accepted Mr. Conkey as an expert in real estate appraisal.

FINDINGS OF FACT

1. The subject property is located at 10354 and 10400 South Bayshore Drive, located in the Elk Rapids Township and within Antrim County.
2. The subject property is classified as Residential and is zoned R-1, Residential.
3. The subject property is commonly referred to as Pine Hollow.
4. The subject site is comprised of three contiguous parcels identified as 05-06-029-011-00, 05-06-029-015-00, and 05-06-450-006-00.
5. The subject neighborhood is defined as Elk Rapids Township.
6. The subject property faces west and is located on the east arm of the Grand Traverse Bay.
7. The subject is located in the lower peninsula of northwest Michigan.
8. Neighboring properties to the subject property do not include custom-built, high-end homes.
9. The subject was built by the billionaire and former owner Leslie Lee.
10. Leslie Lee built the subject dwelling with her family and grandchildren in mind.¹⁶
11. The subject site is improved with a 15,276 square feet dwelling, a 3,483 square feet "events" barn, and a 1,200 square feet pump house.
12. The subject dwelling is a separate structure from the "events" barn. In other words, the dwelling and building are not linked or attached.
13. The subject dwelling has excellent quality of construction.¹⁷
14. The subject was constructed on a crawl space foundation. The dwelling does not have a basement foundation.

¹⁶ Tr, 87, 156, 468,

¹⁷ P-13, P-14, P-15, R-18, and R-19.

15. The subject dwelling does not have a 2-story living room (a.k.a., great room).
16. The subject dwelling does not have an open floorplan.¹⁸
17. The subject's primary bedroom (formerly labeled as a master bedroom) does not have a walk-in closet.
18. The subject's first floor main closet has less than a 12-inch door entry.
19. The subject's "events" barn includes a commercial kitchen, entertainment area and restrooms.
20. The subject's lakefront does not have a boat dock.
21. As of December 31, 2020, and December 31, 2021, the subject property was improved as a single family residential property.
22. Petitioners are Boardwalk Commercial Exchange, LLC (John Rooks) and Todd Stacy Enterprises, LLC (Todd Stacy).
23. Petitioners and seller signed a Nondisclosure Agreement with regards to the purchase of the subject property.¹⁹
24. Petitioners purchased the subject real property on June 12, 2020, for \$3,400,000. The subject personal property was purchased for \$792,000.
25. The subject's 2020 sales transaction uncapped the TV assessment for 2021.
26. Petitioners engaged a home inspection of the subject property on June 9, 2020.
27. Petitioners submitted a valuation disclosure in the form of a formed report prepared by Robert Reamer. The report conveyed a value for 2020. The appraiser concluded to 13,545 square feet for the dwelling. The appraiser excluded the pool area of the dwelling.
28. Petitioners submitted a 2nd valuation disclosure in the form of a narrative appraisal report prepared and signed by James Hartman. He inspected the property on July 21, 2021. The report conveyed values for 2020 and 2021.
29. Petitioners' appraisers' considered all three approaches to value but only developed the sales comparison approach to value.
30. Petitioners' Hartman appraisal report included 9 sales located in the northwest portion of the lower peninsula of Michigan.
31. Respondent submitted a valuation disclosure in the form of a narrative appraisal report prepared and signed by Bradley Conkey.
32. Respondent considered all three approaches but only developed the sales comparison approach to value.
33. Respondent's appraisal reports included 11 sales located in the northwest portion of the lower peninsula of Michigan. A twelfth sale was located in west Michigan (west of Grand Rapids).
34. Respondent's appraiser combined the subject dwelling and "events" barn for a total gross living area of 18,756 square feet for comparative analysis.
35. Respondent's sale 1 has both Lake Michigan access and protected marina dockage; this sale is located in Bay Harbor.²⁰
36. Bay Harbor is a deep-water marina.²¹

¹⁸ Tr, 229-230.

¹⁹ Tr, 161-162.

²⁰ Tr, 525.

²¹ Tr, 526.

37. Respondent's appraiser did not view or inspect his sale 7 located on Lake Michigan in Holland.²²
38. The subject property was featured in an MLive article dated October 24, 2019.
39. The subject property was exposed on the market for 1,502 days.²³
40. The former owner, Leslie Lee, published a coffee table book titled "Sacred Spaces" about the subject property. The publication was dated 2014.
41. High-end luxury homes in excess of 10,000 square feet exist in the lower peninsula of northwest Michigan.²⁴
42. The parties' expert appraisers applied an annual appreciation adjustment of 3% for 2021 to their respective comparable sales.
43. Petitioners' expert appraiser's 2020 TCV of \$4,225,000 and 2021 TCV of \$4,350,000 indicates market appreciation.
44. Respondent's expert appraiser's 2020 TCV of \$5,750,000 and 2021 TCV of \$6,500,000 indicates market appreciation.
45. Respondent's appraisal reports included MLS printouts for its comparable sales data. For the 2020 appraisal report, sale 1 included interior photographs and identifies a great room. Sale 2 did not include interior photographs, but the MLS comments state an "open floor plan with views from every room." Sale 3 did not include interior photographs but states, "walls of windows capturing every view." Sale 4 included interior photographs and identifies a great room with an "open floor plan." Sale 5 did not include interior photographs but identifies a guest house. Sale 6 did not include interior photographs but identifies a great room with 21' floor to ceiling windows. Sale 7 did not include interior photographs but identifies an attached guest cottage, the main dwelling with 4 stories and an elevator. For the 2021 appraisal report, sales 1, 2, 4, 5, and 6 included interior photographs illustrating 2-story, open great rooms. Sale 3 comments state "a wall of windows." Sale 1 has dual lake frontage on Lake Michigan and Bay Harbor. Sale 2 has a boathouse.²⁵ Sale 4 has an elevator. Sale 5 has a finished walk-out basement as well as a guest house. Sale 7 is the same comparable utilized in the 2020 appraisal report.
46. Petitioners submitted interior photographs of its sale 4 located at 6025 Peninsula Drive. This property has a great room and open floor plan.²⁶
47. Petitioners' sale 4 was built by the ex-husband of Leslie Lee (who is the former owner of the subject property).
48. Petitioners' sale 4 was constructed with wood/stone materials similar to the materials in the subject dwelling.

²² Tr, 536.

²³ Tr, 575.

²⁴ Tr, 378-379, 598.

²⁵ P-37.

²⁶ P-34.

CONCLUSIONS OF LAW

The assessment of real and personal property in Michigan is governed by the constitutional standard that such property shall not be assessed in excess of 50% of its true cash value.²⁷

The legislature shall provide for the uniform general ad valorem taxation of real and tangible personal property not exempt by law except for taxes levied for school operating purposes. The legislature shall provide for the determination of true cash value of such property; the proportion of true cash value at which such property shall be uniformly assessed, which shall not . . . exceed 50 percent. . . .²⁸

The Michigan Legislature has defined “true cash value” to mean:

The usual selling price at the place where the property to which the term is applied is at the time of assessment, being the price that could be obtained for the property at private sale, and not at auction sale except as otherwise provided in this section, or at forced sale.²⁹

The Michigan Supreme Court has determined that “[t]he concepts of ‘true cash value’ and ‘fair market value’ . . . are synonymous.”³⁰

“By provisions of [MCL] 205.737(1) . . . , the Legislature requires the Tax Tribunal to make a finding of true cash value in arriving at its determination of a lawful property assessment.”³¹ The Tribunal is not bound to accept either of the parties' theories of valuation.³² “It is the Tax Tribunal's duty to determine which approaches are useful in providing the most accurate valuation under the individual circumstances of each

²⁷ See MCL 211.27a.

²⁸ Const 1963, art 9, sec 3.

²⁹ MCL 211.27(1).

³⁰ *CAF Investment Co v Michigan State Tax Comm*, 392 Mich 442, 450; 221 NW2d 588 (1974).

³¹ *Alhi Dev Co v Orion Twp*, 110 Mich App 764, 767; 314 NW2d 479 (1981).

³² *Teledyne Continental Motors v Muskegon Twp*, 145 Mich App 749, 754; 378 NW2d 590 (1985).

case.”³³ In that regard, the Tribunal “may accept one theory and reject the other, it may reject both theories, or it may utilize a combination of both in arriving at its determination.”³⁴

A proceeding before the Tax Tribunal is original, independent, and de novo.³⁵ The Tribunal's factual findings must be supported “by competent, material, and substantial evidence.”³⁶ “Substantial evidence must be more than a scintilla of evidence, although it may be substantially less than a preponderance of the evidence.”³⁷

“The petitioner has the burden of proof in establishing the true cash value of the property.”³⁸ “This burden encompasses two separate concepts: (1) the burden of persuasion, which does not shift during the course of the hearing, and (2) the burden of going forward with the evidence, which may shift to the opposing party.”³⁹ However, “[t]he assessing agency has the burden of proof in establishing the ratio of the average level of assessments in relation to true cash values in the assessment district and the equalization factor that was uniformly applied in the assessment district for the year in question.”⁴⁰

The three most common approaches to valuation are the capitalization of income approach, the sales comparison, or market, approach, and the cost-less-depreciation

³³ *Meadowlanes Ltd Dividend Housing Ass’n v Holland*, 437 Mich 473, 485; 473 NW2d 636 (1991).

³⁴ *Jones & Laughlin Steel Corp v City of Warren*, 193 Mich App 348, 356; 483 NW2d 416 (1992).

³⁵ MCL 205.735a(2).

³⁶ *Dow Chemical Co v Dep’t of Treasury*, 185 Mich App 458, 462-463; 462 NW2d 765 (1990).

³⁷ *Jones & Laughlin Steel Corp*, *supra* at 352-353.

³⁸ MCL 205.737(3).

³⁹ *Jones & Laughlin Steel Corp*, *supra* at 354-355.

⁴⁰ MCL 205.737(3).

approach.⁴¹ “The market approach is the only valuation method that directly reflects the balance of supply and demand for property in marketplace trading.”⁴² The Tribunal is under a duty to apply its own expertise to the facts of the case to determine the appropriate method of arriving at the true cash value of the property, utilizing an approach that provides the most accurate valuation under the circumstances.⁴³ Regardless of the valuation approach employed, the final valuation determined must represent the usual price for which the subject would sell.⁴⁴

COST APPROACH

As noted, neither expert appraiser developed a cost approach to value. However, Respondent’s expert assessor developed a mass appraisal cost approach. The Tribunal has considered this approach to value but places no reliance on this approach for several reasons. First, as widely acknowledged in valuation practice and theory, the cost approach is most applicable to newer or newer improvements. The subject dwelling was built in 1999. Calculating depreciation (physical, functional and external) is more difficult for older dwellings. Second, Respondent failed to distinguish between a mass appraisal cost approach (from a “universe of properties”) versus the cost calculation of a single property. Respondent’s land sales study and economic condition factors (ECF) study are commensurate with the State Tax Commission and assessing guidelines. However, this mass appraisal methodology is not the equivalent of the cost calculations and analysis for a singular property. Third, Respondent’s

⁴¹ *Meadowlanes*, *supra* at 484-485; *Pantlind Hotel Co v State Tax Comm*, 3 Mich App 170, 176; 141 NW2d 699 (1966), *aff’d* 380 Mich 390 (1968).

⁴² *Jones & Laughlin Steel Corp*, *supra* at 353 (citing *Antisdale v City of Galesburg*, 420 Mich 265; 362 NW2d 632 (1984) at 276 n 1).

⁴³ *Antisdale*, *supra* at 277.

⁴⁴ See *Meadowlanes Ltd Dividend Housing Ass’n v Holland*, 437 Mich 473, 485; 473 NW2d 636 (1991).

assessor admitted to an error in the front feet for the subject site as corrected by an actual survey of the property.⁴⁵ Respondent asserted that the revised front feet could not be applied or corrected in the midst of this tax appeal matter. Fourth, Respondent's assessor also admitted that her errored calculations and true cash value contentions should not be relied upon by the Tribunal. For these reasons, Respondent's mass appraisal cost approach is given no weight or credibility in the independent determination of market value for the subject property.

INCOME APPROACH

As noted, Petitioners envisioned turning the subject property into a high-end rental property.⁴⁶ Petitioners alleged attempts at marketing the subject as a rental property were unsuccessful. Given this information, if Respondent's appraiser had to do the appraisal over again, he would have included an income approach.⁴⁷ As noted in the Findings of Fact, neither party developed an income approach to value. Ultimately, there is no evidence on the record or basis for a consideration of the income approach to value in this tax appeal matter.

SALES COMPARISON APPROACH

Petitioners' first appraisal report, prepared by Robert Reamer, had an effective date of December 31, 2019. The formed appraisal report and comparative analysis is a conventional framework for the valuation of the subject property. All three sales are located on Grand Traverse Bay. However, the formed report has inconsistencies and deficiencies. First, the appraiser concluded to a dwelling square footage excluding the

⁴⁵ Tr, 425-430.

⁴⁶ Tr, 98, 157.

⁴⁷ Tr, 485.

pool area of the dwelling. The in-ground swimming pool is enclosed within the subject dwelling. In other words, the swimming pool is not separately enclosed as a pool house. The swimming pool area was constructed as part of the original dwelling footprint. The appraiser did not articulate any market support or justification for separating this area from the rest of the dwelling. Second, the adjustments for both chronological age and condition appear to be double counting (a.k.a., double dipping). Age adjustments appear to imply that every home depreciates at the same constant rate over time (regardless of updates or renovations). Condition adjustments were confusing given sale 1's "new home" and sale 2's "like new" with both adjusted downward \$250,000. Sale 3's condition was labeled as "good" with a \$200,000 downward adjustment. Third, all three sales are significantly smaller than the subject in dwelling size. The appraiser provided no sales superior to the subject in dwelling size. Regarding the line-item of "functional utility", the subject was labeled as a "super adequacy" and the comparable sales were labeled as "conforms". This noted difference did not include any adjustments. Fourth, all three sales were adjusted upward to the subject without any explanation for the lack of bracketing to the subject. The appraiser provided no sales adjusting downward to the subject. This comparative analysis did not provide or acknowledge the existence of high-end homes over 10,000 square feet in the lower peninsula of northwest Michigan. For these reasons, this valuation disclosure is given no weight or credibility in the independent determination of market value for the subject property.

Petitioners' second appraisal report, prepared by James Hartman, had effective dates as of December 31, 2019, and December 31, 2020. The narrative appraisal

report is a conventional framework for the valuation of the subject property. All nine sales are located in the lower peninsula of northwest Michigan. Petitioner utilized the same 9 sales for the 2020 and 2021 valuations. While challenged by Respondent, the duplication of such sales is permissible in valuation practice; Petitioner accounted for differences in market conditions for the two years under appeal.⁴⁸ All 9 sales have lake frontages for comparison to the subject. Sale 1 occurred in 2015 and while adjusted for market conditions, this sale is too remote to the relevant tax dates. Sale 4 occurred in 2019 and is the closest sale to the December 31, 2019, tax day. Sales 5, 6, 7, and 9 occurred in 2020 and are relevant to the December 31, 2020, tax day. Sale 6 is similar to the subject in the lack of a basement foundation; however, this sale has the largest net adjustments. Sale 8 has the least amount of net adjustments. Sales 1, 2, 3, 5, 6, 7, 8, and 9 have dwelling sizes between 7,398 and 9,234 square feet. These sales are significantly smaller than the subject; these smaller homes required excessive upward adjustments. The Tribunal is not persuaded that these smaller homes are comparable given elaborate amenities and characteristics that otherwise drive their sale prices. As an example, sale 6 (located on Torch Lake) has 7,705 square feet (on a crawl space foundation) and sold for \$9,500,000. This property's amenities and features appear to be more prevalent than dwelling size in the impact of its sales price. Therefore, while all 9 sales were considered, sale 4 provided the most reliable and credible valuation evidence. As will be discussed below, sale 4 will be further reasoned and reconciled for the 2020 and 2021 tax years.

⁴⁸ Respondent's appraiser also included a duplicate sale for his 2020 and 2021 comparative analysis.

Respondent's valuation evidence was developed through two narrative appraisal reports. The appraisal reports are also a conventional framework for a comparative analysis to the subject property. However, there are inconsistencies and deficiencies within the reports. First, the gross living area for the subject was denoted as 18,759 square feet which combined the subject dwelling and the "events" barn. Respondent's appraiser description of improvements is devoid of any reasoning for combining the dwelling and the barn structure. Taking such a liberty is not commonplace in valuation practice especially for a dwelling with excellent quality of construction.⁴⁹ The barn structure does not have the same use and utility as the dwelling. Further, increasing the subject's living area beyond the footprint of the dwelling only created the perception of a super-adequacy in the subject market. The subject dwelling's 15,277 square feet (with noted amenities and characteristics) has its own complexities without including an ancillary structure for a contrived dwelling area. On the other hand, Respondent's comparable sales' gross living areas did not include lower-level finish in the comparative analysis. Said differently, combining a dwelling's various levels (above and below grade) for analysis would perhaps be more permissible and commonplace in a comparative analysis. Second, the comparable sale gross living area adjustments ranged from \$200,000 to \$1,500,000 and did not appear to be analyzed to each specific comparable sale's dwelling size. The appraiser did not give any rationale for these generic incremental adjustments. In other words, the Tribunal is unable to assume or ascertain the market's impact for square footage differences between these custom-

⁴⁹ Outbuildings, "Mother-in-law" apartments, and secondary quarters (as separate buildings) are not routinely combined with a primary dwelling. Ancillary dwellings and structures not physically connected or attached to a primary dwelling are typically analyzed in terms of contributory value to an overall property.

built homes. Similar to Petitioner's appraiser, Respondent's appraiser has analyzed sales with smaller dwelling sizes (between 4,826 to 9,652 square feet). Respondent included two sales over 10,000 square feet for analysis. Sales under 10,000 square feet are significantly smaller than the subject; these smaller homes also required excessive upward adjustments. Again, the Tribunal is not persuaded that these smaller homes are comparable given elaborate amenities and characteristics that otherwise drive their sale prices. Third, as asserted by Petitioners' counsel, Respondent has either overlooked or omitted certain characteristics within its comparable sales. For example, the comparative analyses did not include a line-item entry for dwelling "design/style". Given variations in dwelling styles of high-end luxury homes, the consideration for design is applicable in a comparative analysis.⁵⁰ Next, Respondent has included a line-item entry for "indoor pool" while having included the pool area in the subject's overall living area square footage. This appears to be double counting (a.k.a., double dipping) as pointed out by Petitioner. Yet further, Respondent's rationale for differences between finished basements, unfinished basements and walk-out basements was not understandable.⁵¹ Mr. Conkey believes a finished walkout basement is not necessarily superior to an unfinished basement without a walkout feature. Respondent's subjectivity in combining the dwelling and barn square footages while distinguishing between lower level finished square footages is vexing. In the 2021 sales grid, sale 3 does not have a walk-out basement; sale 5 has a finished 3,000 square feet basement; and sale 7 has a 4,692 square feet basement. Such a

⁵⁰ Design and style are integral to a dwelling's layout and functional utility. The style of dwelling is reasonably related to market tastes and acceptance. Respondent's appraiser omitted a line-item entry for "functional utility" but claims the subject is an over-improvement for the area. (Tr, 505).

⁵¹ Tr, 545-549.

subjective viewpoint did not necessarily reflect market tastes and preferences. **Fourth**, Respondent's appraiser's adjustments were broad. Said differently, the adjustments appear to be generalized in 10- and 100-thousand-dollar increments. For example, the dwelling size adjustments do not give consideration between a 7,000 square foot home and a 10,000 square foot home. Again, flat adjustments for the differences in dwelling size is unacceptable. Fifth, as pointed out by Petitioners, Respondent has overlooked several amenities within its sales data. As noted in the Findings of Fact, Respondent's comparable sales MLS printouts identified such amenities as guest homes, elevators, and open floor plans.⁵² The omission of amenities and characteristics to sales within a comparative analysis is equally unacceptable. All readily available and relevant property characteristic information should be analyzed. Sixth, Respondent's appraiser's overzealous effort to promote the subject appeared to have little to do with the market value of the property. Promoting features of the subject dwelling while admitting to subjective adjustments strayed from a persuasive indication of market value.⁵³ Therefore, Respondent's sales for 2020 and 2021 were considered; however, the sales, the quantitative adjustments, and the adjusted sale prices are given no weight or credibility in the independent determination of market value for the subject property.

Contentions and distinctions between such areas as Petoskey, Charlevoix, Traverse City, Harbor Springs, and Bay Harbor, etc. were not reasonably quantified for

⁵² Respondent's appraiser's combined square footage the subject's dwelling and "events" barn is inconsistent with Respondent's lack of analysis for guest houses for certain comparable sales. Likewise, a custom-built home's walk-out lower-level area could justifiably be included in a dwelling's gross living area. The selective nature of Conkey's square footage determinations is not meaningful and is misleading.

⁵³ Tr, 454-474, 492. Personal opinions are not the equivalent of professional opinions regarding valuation issues.

alleged differences. Again, Elk Rapids was described as a quaint, quiet community. Both parties failed in the attempt to quantify and/or distinguish different types of “quietness” attributed to the Elk Rapids area.⁵⁴ The vast array of locations for custom built high-end homes involving lake frontage was equally unpersuasive to the value of the subject property. For example, personal considerations over mosquitos at different points of Walloon Lake were not meaningful.⁵⁵ Further, claiming Bay Harbor is not *vastly* superior to the subject’s Elk Rapids location infers that Bay Harbor is in fact superior to Elk Rapids.⁵⁶ There is no way for the Tribunal to measure the term “vastly” from such subjective testimony. There is no indication that Elk Rapids is displeasing to market participants other than to offer different recreations and amusements from a larger city of like Traverse City. While locational differences were not reasonably quantified, those different locations were qualitatively apparent. As discussed, a small dwelling (i.e., 7,705 square feet) selling on Torch Lake for \$9,500,000 appears to be qualitatively superior to the subject’s location.

Respondent’s cited sales in excess of 13,000 square feet for an average price per square feet (in support of Respondent’s conclusions of value) are equally misplaced for the forgoing reasons. First, out of 10 total sales, only 1 sale is located on the west side of Michigan. This sale is located in the Holland market. The other nine sales are located in southeastern Michigan and within the metropolitan Detroit area. Illustrating larger homes with over 13,000 square feet in different market areas is not cogent to a comparative analysis of the subject property. Second, 5 sales (for each tax year) were

⁵⁴ Tr, 584.

⁵⁵ Tr, 583.

⁵⁶ Tr, 580.

merely calculated to determine an average square foot, a sale price, and \$/SF. The summary information omitted any detail regarding property characteristics and amenities. None of the sales were analyzed or applied to the subject. A statewide search for larger homes just for the sake of proving a \$/SF is nonsensical. A reasoned comparative analysis is premised on a subject's neighborhood and market. Therefore, Respondent's cited sales are given no weight or credibility in the independent determination of market value for the subject property.

SALE OF THE SUBJECT PROPERTY

The Tribunal has reviewed and considered evidence regarding the sales history for the subject property. As noted in the Findings of Fact, the subject had an extensive listing history and corresponding price reductions. The parties to the subject's 2020 sale transaction were unrelated to one another. On the one hand, the previous owner, Leslie Lee was determined to sell the property. On the other hand, Petitioners were determined to get a good deal.⁵⁷ More aptly, the subject's prior sale price gives an indication to the market's perception of the subject property. In other words, the subject property was exposed to market participants as well other competing high-end custom-built properties. Valuation theory prominently speaks to the concept of *substitution*⁵⁸. Here, the parties' appraisers applied this concept with their respective comparative analysis to the actions of market participants. The subject's reductions in listing prices speaks to the market's reactions to the subject property. As indicated by both parties'

⁵⁷ Petitioners are savvy market purchasers. While the subject is a unique property, Petitioners nonetheless negotiated a deal for an advantageous purchase price. Curiously they were so savvy to drive down the purchase price but not so savvy to back out of the deal.

⁵⁸ Appraisal Institute, *The Dictionary of Real Estate Appraisal* (Chicago: 7th ed, 2022), 184.

appraisers, their contentions of value are greater than the subject's 2020 sale price. More telling is the fact that the subject was exposed to the market and the market responded. Specifically, the appraisers' respective considerations over the subject as an over-improvement or as a super-adequacy was answered by the market. While the subject's construction costs were not verified, the subject listing and numerous price reductions prove the market's reaction to the subject property. The previous owner's pride of ownership is undisputed. Likewise, the home was constructed specifically for the needs and tastes of Leslie Lee. However, the home was not constructed with a consideration to amenities and improvements found in competing custom built homes in the market area. There is no evidence on the record showing that the market's positive response to a home without an open floorplan. None of the parties' collective comparable sales data illustrated homes without open 2-story entries and/or living rooms (a.k.a. great rooms). Moreover, none of the comparable sales included primary bedrooms without walk-in closets, nor bedrooms designed specifically for children with lowered bathroom fixtures nor smaller rounded bedroom entry doorways. Thus, the subject's listing history demonstrated the market's reactions to the subject's features.

Respondent's belief that the subject property was "given away" is not supported by consistent evidence. While Mr. Conkey spoke with the seller on a limited basis, he admitted that he was not privy to the non-disclosure agreement involved in the sales transaction for the subject property. Moreover, he was not privy to the email exchanges⁵⁹ between the Leslie Lee (seller), Jon Rooks (buyer and real estate broker), Todd Stacy (buyer), Andrew Shotwell (Attorney representing the seller), Shawn Smith

⁵⁹ R-8.

(seller's broker) and Byrdie Butka (seller's manager). Price reductions, extended marketing times, and a non-disclosure agreement do not necessarily signify a non-arm's length transaction. There is no evidence on the record noting the original construction cost of the subject dwelling. As admitted by the appraisers, cost does not equal value.

Acknowledgment to the renowned architect Roger Hummel for the construction of the subject dwelling is respectfully misplaced. This acclaimed architect was paid for what the client/property owner wanted. Said differently, the dwelling reflects the desires and ambitions of the former owner, not the builder. It was Leslie Lee's desire to construct a home with the many described features and amenities. In this regard, the former owner built the home for her exclusive/specific wants and needs without regard to the market at large.⁶⁰

CONCLUSION

Petitioner's sale 4 located at 6025 Peninsula Drive provides the most reliable and credible valuation evidence in this tax appeal matter. Again, all of the parties' other sales were given no weight after consideration by the Tribunal. On the other hand, this particular sale is relevant for several reasons. First, this is a high-end, custom dwelling with similar materials as the subject. Specifically, the dwellings are similar in chronological age as well as in wood/stone materials found throughout the dwellings.⁶¹ Second, this comparable sale has over 10,000 square feet of living area. This sale demonstrates the marketability and appeal of a larger home in a similar lake setting.

⁶⁰ *Superadequacy* is defined as "An excess in the capacity or quality of a structure or structural component; determined by market standards." Appraisal Institute, *The Appraisal of Real Estate* (Chicago: 7th ed, 2022), 185.

⁶¹ Notably, the comparable sale located at 6025 Peninsula Drive was constructed by the ex-husband of Leslie Lee (the former owner of the subject property).

While this sale is superior to the subject in lower-level finished area of 5,816 square feet, this area may have been combined with the above grade area of 11,148 square feet for a total of 16,964 square feet.⁶² This sale's lower level has similar quality as its first floor materials and finishes. Third, this property is located on the west arm of the Grand Traverse Bay and faces to the west. The subject also faces west but is located on the east arm of the Grand Traverse Bay. This comparable property is not located on a prominent inland lake. This comparable sale is inferior with a smaller lake frontage but is superior with proximity to Traverse City. Sale 4 has smaller lake frontage, but photographic evidence depicts an open, spacious outdoor setting with extensive patio areas. The site and location adjustments appear to be offsetting and are omitted from the adjustment grid. Petitioners' remaining adjustments to sale 4 are reasonably supported on a qualitative basis. Respondent's allegations of duplicate or double-counted adjustments by Petitioner is without merit. Petitioner's adjustments for sale 4 may appear to be overlapping but are more persuasive given line-item entries (i.e., design/style) not found in Respondent's adjustment grids. The resulting adjustments conclude to a TCV of \$4,219,200 for 2020 and a TCV of \$4,373,200 for 2021.

Overall, the valuation evidence persuasively portrayed and characterized the subject neighborhood as Elk Rapids Township and the subject market as the lower peninsula of northwest Michigan. Petitioners' representation of the subject's functional utility⁶³ is supported by those amenities and improvements not found in the parties'

⁶² It is not uncommon for custom high-end homes to be marketed by combining square feet from all levels. (Tr, 378-379, 597). As noted, Respondent's appraiser elected to combine the subject dwelling and "events" barn square footages for analysis. However, Respondent's appraiser did not give similar treatment to his comparable sales' gross living area from all levels.

⁶³ Appraisal Institute, *The Dictionary of Real Estate Appraisal* (Chicago: 7th ed, 2022), 79.

sales data and extensive photographic evidence. The subject's dwelling size and custom materials do not overcome the lack of an open floorplan, a walk-out lower level, or a main bedroom walk-in closet. Again, with a reasoned application, Petitioners' comparable sale 4 provided the most reliable and credible valuation evidence for the independent determination of market value for the subject property.

The Tribunal finds, based upon the Findings of Fact and the Conclusions of Law set forth herein, that the subject property was over-assessed for 2020 and 2021. The subject property's TCV, SEV, and TV for the tax years at issue are as stated in the Introduction section above.

JUDGMENT

IT IS FURTHER ORDERED that the property's state equalized and taxable values for the tax years at issue are MODIFIED as set forth in the Introduction section of this Final Opinion and Judgment.

IT IS FURTHER ORDERED that the officer charged with maintaining the assessment rolls for the tax years at issue shall correct or cause the assessment rolls to be corrected to reflect the property's true cash and taxable values as finally shown in this Final Opinion and Judgment within 20 days of the entry of the Final Opinion and Judgment, subject to the processes of equalization. See MCL 205.755. To the extent that the final level of assessment for a given year has not yet been determined and published, the assessment rolls shall be corrected once the final level is published or becomes known.

IT IS FURTHER ORDERED that the officer charged with collecting or refunding the affected taxes shall collect taxes and any applicable interest or issue a refund within 28 days of entry of this Final Opinion and Judgment. If a refund is warranted, it shall include a proportionate share of any property tax administration fees paid and penalty and interest paid on delinquent taxes. The refund shall also separately indicate the amount of the taxes, fees, penalties, and interest being refunded. A sum determined by the Tribunal to have been unlawfully paid shall bear interest from the date of payment to the date of judgment, and the judgment shall bear interest to the date of its payment. A sum determined by the Tribunal to have been underpaid shall not bear interest for any time period prior to 28 days after the issuance of this Final Opinion and Judgment.

Pursuant to MCL 205.737, interest shall accrue (i) after December 31, 2013, through June 30, 2016, at the rate of 4.25%, (ii) after June 30, 2016, through December 31, 2016, at the rate of 4.40%, (iii) after December 31, 2016, through June 30, 2017, at the rate of 4.50%, (iv) after June 30, 2017, through December 31, 2017, at the rate of 4.70%, (v) after December 31, 2017, through June 30, 2018, at the rate of 5.15%, (vi) after June 30, 2018, through December 31, 2018, at the rate of 5.41%, (vii) after December 31, 2018 through June 30, 2019, at the rate of 5.9%, (viii) after June 30, 2019 through December 31, 2019, at the rate of 6.39%, (ix) after December 31, 2019, through June 30, 2020, at the rate of 6.40%, (x) after June 30 2020, through December 31, 2020, at the rate of 5.63%, (xi) after December 31, 2020, through June 30, 2022, at the rate of 4.25%, and (xii) after June 30, 2022, through December 31, 2022, at the rate of 4.27%.

This Final Opinion and Judgment resolves all pending claims in this matter and closes this case.

APPEAL RIGHTS

If you disagree with the final decision in this case, you may file a motion for reconsideration with the Tribunal or a claim of appeal with the Michigan Court of Appeals.

A Motion for reconsideration must be filed with the required filing fee within 21 days from the date of entry of the final decision.⁶⁴ Because the final decision closes the case, the motion cannot be filed through the Tribunal's web-based e-filing system; it must be filed by mail or personal service. The fee for the filing of such motions is \$50.00 in the Entire Tribunal and \$25.00 in the Small Claims Division, unless the Small Claims decision relates to the valuation of property and the property had a principal residence exemption of at least 50% at the time the petition was filed or the decision relates to the grant or denial of a poverty exemption and, if so, there is no filing fee.⁶⁵ A copy of the motion must be served on the opposing party by mail or personal service or by email if the opposing party agrees to electronic service, and proof demonstrating that service must be submitted with the motion.⁶⁶ Responses to motions for reconsideration are prohibited and there are no oral arguments unless otherwise ordered by the Tribunal.⁶⁷ A claim of appeal must be filed with the appropriate filing fee. If the claim is filed within 21 days of the entry of the final decision, it is an "appeal by right." If the claim is filed

⁶⁴ See TTR 261 and 257.

⁶⁵ See TTR 217 and 267.

⁶⁶ See TTR 261 and 225.

⁶⁷ See TTR 261 and 257.

more than 21 days after the entry of the final decision, it is an “appeal by leave.”⁶⁸ A copy of the claim must be filed with the Tribunal with the filing fee required for certification of the record on appeal.⁶⁹ The fee for certification is \$100.00 in both the Entire Tribunal and the Small Claims Division, unless no Small Claims fee is required.⁷⁰

By 

Entered: September 7, 2022

⁶⁸ See MCL 205.753 and MCR 7.204.

⁶⁹ See TTR 213.

⁷⁰ See TTR 217 and 267.